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FEDERAL COMMUNICATIONS COMMISSION  
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March 4, 1996

**Via Hand Delivery**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: *In the Matter of Interconnection Between Local Exchange and  
Commercial Mobile Radio Service Providers  
CC Docket No. 95-185***

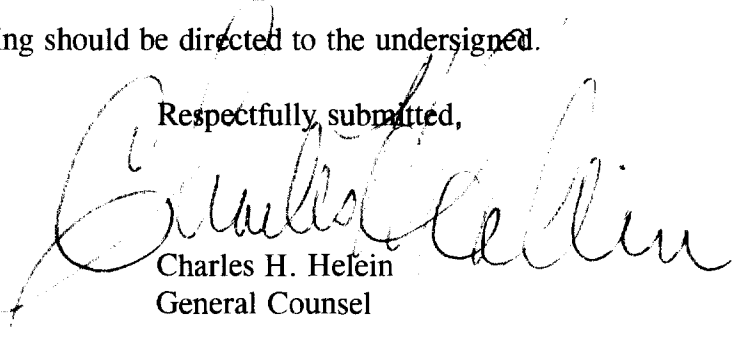
Ladies and Gentlemen:

Enclosed for filing, on behalf of America's Carriers Telecommunication Association ("ACTA"), is an original and nine (9) copies of ACTA's Comments in regard to the above-referenced matter.

An additional copy of this filing has also been enclosed, to be date-stamped and returned to the courier for delivery to the undersigned.

Any questions regarding this filing should be directed to the undersigned.

Respectfully submitted,

  
Charles H. Helein  
General Counsel

CHH/sh  
Enclosures

cc: Janice Myles, Common Carrier Bureau  
International Transcription Services, Inc.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the matter of

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Interconnection Between Local Exchange  
Carriers & Commercial Mobile Radio Service  
Providers

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CC Docket No. 95-185

COMMENTS OF AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION

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Dated: March 4, 1996

## **SUMMARY**

America's Carriers Telecommunication Association ("ACTA") is a national trade association of competitive interexchange, non-dominant telecommunications companies. Its members provide interexchange telecommunications services on an intrastate, interstate and international basis to the public at large.

ACTA urges the Federal Communications Commission ("FCC") to establish a firm and even-handed policy in the establishment of interconnection policies and procedures between the LECs and the CMRS providers. Such policies are necessary if the potential for wireless and local competition are to be realized. "...The addressable market for PCS will be approximately half (about 47 million) of all U.S. households during the first ten years of full availability and that 15 percent (14 million) of U.S. households would purchase such service if offered in the first three to five years."<sup>1</sup>

ACTA agrees that the existing general interconnection policies do not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service. In many respects, the price of access is the last bottleneck and if competition is to flourish, the prices, terms and conditions of interconnection should not be used by wireline carriers as anti-competitive devices.

ACTA further supports the Commission's intent to move expeditiously in establishing policies governing the rates charged for LEC-CMRS interconnection. ACTA sees no reason for these policies to be created on an interim basis, as this approach lends itself to future instability. Interconnection rates and policies are central to the growth of

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<sup>1</sup> "Personal Communications Services in the United States", Barry E. Goodstadt, 7/17/91 27-2

competition, not only in the CMRS industry, but also in the Competitive Local Exchange Carrier industry, the Paging industry and the Interexchange Carrier industry. Since divestiture, the long distance customer has been paying an exorbitant fee for the origination and termination of a long distance call. In most instances, this amount represents 50% or more of the cost of the call. In fact, the price of access is so high as to contribute substantially to the profits of the local exchange carriers.

ACTA recognizes that several methods are now being discussed as possible solutions. ACTA urges the Commission to adopt its recommendation that payment for interconnection for local switching facilities and connections to end users proceed on a *"bill and keep"* basis. This means that the customer would pay for the origination part of the call to the carrier upon whose network the call was originated, but the carrier who terminates the call would not receive any compensation (i.e., both the LEC and the CMRS providers would charge a rate of zero for terminating traffic). In addition, these rates should be publicly tariffed. Rates for dedicated transmission facilities should be set based on existing access charges for similar services.

**II. Compensation for Interconnected Traffic Between LECs and CMRS Providers' Networks**

**A. Compensation Arrangements**

**3. Pricing Proposals (Interim, Long Term, Symmetrical)**

The cost of interconnection has been used as an anti-competitive tool since the divestiture of AT&T in 1984. There are many wireless carriers who have proven that the present policy under which wireless carriers are compensated for traffic terminating on their networks is not being enforced. In fact, they have provided testimony that these policies have been largely ignored by the LECs.<sup>2</sup> These carriers have advanced three possible approaches for modifying the current mutual compensation policy which are *Reciprocal Compensation*, *Cost Based Compensation* and *Bill and Keep*.

It is the *Reciprocal Compensation* practice that is presently being ignored by the LECs. It has been the Commission's long standing policy that the wireless carriers be compensated by the LECs for calls they terminate on wireless networks, just as the wireless carriers have to compensate the LECs when they terminate a call on their network. Dr. Gerald Brock states that the level of rates under mutual compensation is irrelevant only if the level of incoming and outgoing traffic is exactly the same, a situation which rarely occurs.<sup>3</sup> Not only has this not been the case, but some LECs have actually imposed origination access charges on those carriers for delivering traffic to them. This is a prime example of where the market power of the LECs has determined the competitive

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<sup>2</sup> "PCIA" comments 13-14

<sup>3</sup> Gerald W. Brock, "Interconnection and Mutual Compensation with Partial Compensation"

environment. Several carriers have stated that LECs have simply refused to pay compensation.<sup>4</sup>

There are several problems with *Reciprocal Compensation*. First of all, it is not working now with the limited competition being offered by two existing carriers, one of which is a subsidiary of the wireline carrier. Secondly, in this scenario, the wireline carrier sets the price of access and support, thus dictating marketplace conditions and terms. Finally, and perhaps most compelling, is that this approach legitimizes the principle of access charges, which ACTA firmly disputes.

The LECs have advanced *Cost Based Compensation* as their preferred method. In this method, each of the carriers would base the cost of access on their total costs divided by total minutes. Because of the disparity in size of the various organizations and the embedded costs of the LECs, the networks first established as monopolies would clearly have the highest cost structure. There is such a disparity in the traffic that would originate on the LEC network and terminate on the wireless network rather than the opposite that the monopoly would have both an incentive and ability to hold out for a high rate.<sup>5</sup> However, most of the cost of service is related to the capacity of the plant rather than the actual number of minutes used. Never have the regulatory bodies been able to regulate the local exchange carriers by relying on cost figures. Historically, these entities have used cross-licensing agreements and cross-subsidization to control both their markets

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<sup>4</sup> Point Comments at 7, PageNet Comments at 10, Cox Comments at 2

<sup>5</sup> Comcast Comments at 11-16, Cox Comments at 6-10

and regulators. ACTA strongly urges that these mistakes of the past not be visited upon these new industries.

*Bill and Keep* is another matter. It is simple to understand, simple to administer, and cost-effective for both the large and smaller carriers. With this approach, there is no charge for termination. This makes it easy to administer, because the carrier which originates the call bills the user and keeps the revenue, thus reducing staff and settlements processes. Brock claims that, although "sender keeps all" departs from the theoretical goal of cost-based compensation by setting below-cost prices for terminating traffic, there is less opportunity for manipulation than if the prices were set above cost. If the traffic was balanced, the price would be irrelevant. But the traffic is *not* balanced. Each market has less than 1% of the traffic of the established, wireline carrier.

Obviously, the LECs do not like the *Bill and Keep* approach. It would loosen their control on their historic market. They would still be able to recover the minimal cost of termination from their customers but not from their competitors. Since it is the dominant interconnection method between adjacent LECs today, they should not have such a problem utilizing it for interconnection with other carriers.

ACTA supports the *Bill and Keep* approach recommended by the Commission. Under this arrangement, neither network would charge the other for the termination of the other traffic. Instead, each recovers its costs from its own end users. This approach is presently in use in California, Connecticut, Pennsylvania and Texas.

ACTA realizes that there are other options available, among them *Bill and Keep for Off Peak Usage Only, A Subset of Access Charges, Existing Interconnection Arrangements Between Neighboring LECs and Cellular Carriers, etc.* None of them offer the benefits that *Bill and Keep* does for the market.

The *Bill and Keep for Off-Peak Usage Only* proposal complicates an approach that works because of its simplicity. In the attachment to the Comcast Comments, Gerald Brock acknowledges that "the true cost for peak usage is much greater than the cost for off peak usage...[which] may be near zero,"<sup>6</sup> ACTA agrees that the cost would be higher because the network would have to be engineered to support those peak traffic loads. However, this same scenario exists for the LEC as it does for the CMRS provider as well as any other network. The suggestion that there should be two types of access or interconnection plans adds needless complexity to network measurement, cost and design and the process.

Using *A Subset of Access Charges* that the LECs have with the interexchange carriers codifies a procedure that many believe to be onerous, anti-competitive and one that the FCC is about to review. There does not appear to be any reason to establish a subsidy for the benefit of the LEC as the Commission attempts to open these markets to competition. Just as ACTA feels that there is no reason for peak and off peak rates, so too, we feel that there is no reason for payment of a Common Carrier Line Charge or the Transport Interconnection Charge. In fact, these are subsidies that are used as tools for market control.

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<sup>6</sup> "Interconnection and Mutual compensation with Partial Competition", paper # 3 @ 3



However, ACTA does submit that the Commission could use the *Existing Arrangements Between Neighboring LECs* as an approach because, ACTA believes these agreements are basically fashioned around a *Bill and Keep* approach. These agreements, while not all the same, still tend towards simplicity of administration and use. However, because these arrangements are bilateral, their terms and conditions are not public. In addition, their terms probably vary between the large and smaller LECs. Therefore, the *Bill and Keep* format should be used on a national, mandated basis.

Using the *Existing Arrangements Between LECs and Cellular Carriers* would not be appropriate for a newly competitive marketplace. It is important that the cellular carriers presently exist as a duopoly. One of the cellular carriers is owned by the LEC and the other is probably a subsidiary of another RBOC or AT&T. It has been to their advantage to structure the cost of interconnection to benefit the LEC and to have the rates high enough so that they are really barriers to entry. Therefore, these arrangements should not be carried over. In fact, they should be eliminated so that all CMRS carriers compete on an equal playing field.

There are very few states that have tariffed *Measured Local Service Rates*. It has been suggested that the LEC that did offer measured service could charge half of that rate as the interconnection rate. First of all, local service rates are not based upon costs. Secondly, charging half the price of a local call minute is very expensive interconnection. Finally, using this approach would again place the future of the competitive market in the hands of the LECs.

The same can be said of the *Uniform Rate* that has been suggested as an alternative. There is an underlying assumption that there should be interconnection costs

which are paid by the competitive CMRS carriers. ACTA disputes this premise. There should be no access charges. Codifying a national *Uniform Rate* accepts the right and need for the LECs to receive revenue for terminating traffic. ACTA agrees that they have the right to charge for origination access on their network. But, to facilitate competition, there can be no terminating interconnection charges. That is why ACTA supports *Bill and Keep* as both an interim as well as a long term approach for interconnection.

**II. Compensation for Interconnected Traffic Between LECs and CMRS Providers' Networks**

**B. Implementation of Compensation Arrangements**

**1. Negotiations and Tariffing**

LECs are currently required to engage in good faith contractual negotiations over CMRS interconnection arrangements. The established cellular industry, the LECs and AT&T support the continued use of *"good faith"* negotiations. They say that there is no need for tariffing due to the savings on administrative costs which produce better and more flexible arrangements which are not anti-competitive.

The new entrants such as MCI Metro, other CLECs, the new PCS companies, and ACTA are not so sure. These entities and ACTA find the process of tariffing to be an established practice which ensures there is fair public access to information on rates, terms and conditions.

It is hard to accept that there will be massive cost savings if CMRS interconnection rates and conditions are not tariffed. Most LEC services are tariffed. AT&T has tariffed over 3,700 contract tariffs. The cost of tariffing these services is likely, therefore, to be very low and only incremental. Moreover, it is doubtful that not tariffing alone could or would produce lower rates. Finally, public tariffs are the only adequate protection against LEC and AT&T/LEC discriminatory conduct.

Because of these considerations, ACTA strongly urges the Commission to mandate the filing of interconnection tariffs. Moreover, the new CMRS companies do not have the time to "freely discuss and negotiate a wide variety of interconnection options . . ." <sup>7</sup>

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<sup>7</sup> FCC NPRM Docket 95-505

Indeed, one of the principle values of tariffing is its coverage of all like-kind arrangements with but one available document. Individual contracts will only create a mountain of paper which can easily hide discriminatory practices.

The FCC must clearly consider the environment in which these "negotiations" will take place as well. The LECs must look upon this entire process as the dismantling of their traditional monopoly. While the LECs claim to have supported deregulation and competition, and can be expected to increase their lip service to such goals, the competitive facts remain. The longer that the LECs can delay or slow the process, the longer they can dominate local markets. Successful negotiating not only takes time, ideally, it takes the existence of parties with equal or nearly equal bargaining positions. There clearly is inequality of leverage between the dominant LEC and entry-level newcomers. Without public disclosure, through tariffs, the LEC has the ability to continue to influence the market, even to the point of entering into individually created relationships with potential competitors.

This is not good for competition or the development of the market. The LEC must be considered the dominant carrier in their operating area. As such, ACTA urges the Commission to mandate that the LECs totally unbundle their interconnection services and file those rates as tariffs.

**II. Compensation for Interconnected Traffic Between LECs and CMRS Providers' Networks**

**B. Implementation of Compensation Arrangements**

**2. Jurisdictional Issues**

In the 1993 Budget Act, Congress stated that the FCC would not have jurisdiction over the CMRS carriers with respect to charges, classifications, practices, services, facilities or regulations except as specified in sections 223 through 227 inclusive and section 332, and subject to the provisions of section 301 and Title VI. It also stated that no State or Local government shall have any authority to regulate the entry of or rates charged by CMRS carriers. However, the State could petition the FCC for that authority. If granted, then that individual state law would apply.

The local and long distance industries have been bifurcated long enough. ACTA believes that the Commission should have exclusive jurisdiction over the rates and terms of both interstate and intrastate interconnection between the CMRS providers and the LECs. ACTA believes that these amendments to the Communications Act of 1934 now clearly supersedes state jurisdiction over intrastate CMRS rates. ACTA believes that Congress granted the Commission this authority by amending Section 2(b) which dictates that the substantive provisions of Section 332 determine the Commission's jurisdiction over CMRS and preempts state authority over rate and entry regulation of CMRS. In addition, ACTA believes that the Budget Act of 1993 expressly grants the Commission sole authority to define the statutory terms "interconnected service" and "public switched telephone network" ("PSTN"). This shows that Congress intended to grant the Commission authority to regulate the interconnection between the LECs and the CMRS providers.

ACTA believes that Congress amended Section 2(b) specifically so that states no longer retain jurisdiction over purely intrastate calls and that the Commission may preempt state regulation that would negate the legitimate exercise of the Commission's interstate authority. ACTA strongly supports the notion that the federal goal of a nationwide wireless communications build-out would be impossible to achieve if systems' architecture and interconnection nodes have to be designed to accommodate varying state requirements with respect to interconnection compensation.

Therefore, ACTA believes that the Commission should adopt mandatory federal policies and procedures to govern the interconnection arrangements between the LECs and CMRS providers with respect to interstate and intrastate services. However, we believe that the state commissions should be allowed a wide range of choices with respect to implementing specific elements of these arrangements. Thus, although compliance with these policy parameters would be mandatory, state commissions would have substantial latitude in developing specific arrangements that would comply with these parameters. This would allow the states to continue regulatory oversight but in a format that would be consistent throughout the country. ACTA firmly believes that competitive markets require uniformity of regulation, consistency of action but flexibility to adapt to local requirements if necessary.

It would be pointless to precipitate a conflict between the Commission and the state regulatory agencies. This would needlessly lengthen the deployment of nationwide wireless services as stipulated in the Budget Act of 1993 and would play into the hands of the LECs by allowing them to utilize possibly ambiguous regulatory language or policies to delay the implementation of equitable interconnection policies. Just as it is now

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necessary to eliminate inter and intra state designations for telephone calls, it is just as necessary to establish uniform policies and procedures that reflect close cooperation between the Commission and state regulatory agencies.

**III. Interconnection For The Origination And Termination of Interexchange Traffic**

It is difficult to make decisions on how to regulate a new and emerging industry such as the CMRS today with market and service definitions established at the time of divestiture. Both technology and markets have changed dramatically. Long distance rates have declined more than 60% over the past 12 years. During that same time, the country has witnessed dramatic growth in the use of wireless technologies such as cellular whose rates have also declined, though not as dramatically, while LEC charges have increased.

In order to make wireless service viable, it was necessary to provide users with the ability to make long distance calls. Because the appeal of cellular was tremendously underestimated and because one of the cellular carriers was owned by a wireline carrier, it was determined that access would begin at the wireline access point. It was an easy solution to what was thought would be a minuscule business.

Times have changed! Today, cellular currently represents 11.6% of intrastate toll revenue and 2.5% of interstate toll revenues.<sup>8</sup> There are more than 28,000 new subscribers per month on the cellular networks. American Personal Communications, the nations first PCS network to enter business on November 15, 1995 in Washington, D.C. gained 27,000 customers by years end. Wireless has grown into a major industry with rapid, continued growth still predicted for the next ten years. The present method of access does not have either the IXCs or LECs remitting any portion of the access charge to the CMRS carrier.

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<sup>8</sup> Telecomm. Industry Revenue: TRS Fund worksheet Data", Jim Lande, FCC 12/29/94



ACTA believes that the principle of *Bill and Keep* applies to this situation just as it does to the other interconnection agreements. When the CMRS end user originates a call, it then goes to the LEC tandem which then "terminates" the call on the long distance carrier of choice. This interim termination should not be classified as an origination point for the end user. That was done on the CMRS carrier. If *Bill and Keep* is approved by the Commission, the terminating LEC would do so without a charge.

If the actual origination of the call was on a CMRS carrier, it should be so designated. The fact that there may be an interim termination or selection point that is made by the LEC does not make that connection the call origination point. And since it is not, there should be no charge to the origination carrier for this service. However, since the call is now stipulated to originate on the CMRS carrier, it should be able to recover from the IXCs as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs or vice versa. In fact, ACTA strongly supports the equal treatment of CMRS carriers and LECs or CLECs.

#### **IV. Application of These Proposals**

ACTA believes that the communications industry is forced to bear the burden of constantly changing state and federal regulation. It is obviously the intent of Congress, both with the Budget Act of 1993 and the Telecommunications Reform Act of 1996 to foster the growth of competition within the telecommunications industry. In order for this to occur, there is going to have to be a standardization in the regulation of the industry as technologies and capabilities merge together. ACTA believes that the Commission should include as many CMRS entities that support voice telecommunications as necessary to provide a framework for growth and their interconnection and competition with LECs.

**VI. Other**

**Conclusion**

In developing policies regarding LEC-CMRS interconnection, the overriding goal should be to maximize the benefits of telecommunications to the American consumer. That goal differs sharply with the current interconnection arrangements that simply favor the LEC at the expense of either competitive LECs or CMRS carriers. ACTA urges the Commission to eliminate terminating costs and mandate the use of the *Bill and Keep* interconnection arrangement.

Respectfully submitted,

America's Carriers Telecommunication Assn.

By: 

Charles H. Helein  
General Counsel

Dated: March 4, 1996